

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

wbc

Mailed: September 18, 2015

Opposition No. 91217235

Financial Industry Regulatory
Authority, Inc.

v.

Voice Proctor, Inc.

Wendy Boldt Cohen, Interlocutory Attorney:

This case now comes before the Board on:

1. Opposer's motion to extend trial dates filed June 12, 2015; and
2. Applicant's combined response thereto and motion to dismiss¹ pursuant to Trademark Rule 2.132(a) filed June 15, 2015.

The Board has considered the parties' submissions and presumes the parties' familiarity with the arguments made therein. The parties' arguments will not be summarized herein except as necessary to explain the Board's decision.

Opposer's testimony period was set to close June 12, 2015. Because Opposer acted prior to the expiration of trial, it need only show "good cause" for the extension sought. *See* Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509.01(a). A

¹ Opposer has not filed a response to Applicant's motion to dismiss pursuant to Trademark Rule 2.132(a). Nonetheless, the Board, in its discretion, declines to treat the motion as conceded. *See, e.g., Boyds Collection Ltd. v. Herrington & Co.*, 65 USPQ2d 2017, 2018 (TTAB 2003); *International Finance Corp. v. Bravo Co.*, 64 USPQ2d 1597, 1599 (TTAB 2002); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Manufacturing Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000); TBMP § 502.04 (2015).

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motion to extend should include a recitation of specific facts constituting good cause for the extension sought. *See Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000); *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999); *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999). The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See, e.g., American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313 (TTAB 1992).

Oposer alleges that the parties are engaged in settlement negotiations, including a draft agreement and that therefore, it seeks the current extension of its testimony period.² The Board further notes Opposer has not abused the privilege for extensions as this is the first extension of these proceedings sought by either party and there is no evidence of record that Opposer is acting in bad faith.

In view thereof, Opposer has established good cause, although just barely, for the extension sought.³ The motion to extend time to respond is **granted** as modified below. However, in view of Applicant's stated objections to further delay, Opposer's testimony period will *not* be further extended absent

² Applicant alleges that the parties' last substantive negotiations took place in February 2015. Applicant further alleges that the parties' are no longer in settlement negotiations.

³ Opposer filed its motion to extend on the final day of its trial period. The better practice would have been to seek suspension of the proceedings for settlement negotiations.

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Applicant's consent thereto or a showing of extraordinary circumstances which is supported by a declaration or other credible evidence. *See e.g., Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999) (“sparse motion contains very little information upon which the Board could find good cause”). In view of the Board’s order extending dates, Applicant’s motion to dismiss filed pursuant to Trademark Rule 2.132(a) is moot.

Dates are reset as follows:

Plaintiff's 30-day Trial Period Ends	10/15/2015
Defendant's Pretrial Disclosures	10/30/2015
Defendant's 30-day Trial Period Ends	12/14/2015
Plaintiff's Rebuttal Disclosures	12/29/2015
Plaintiff's 15-day Rebuttal Period Ends	1/28/2016

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. *See* Trademark Rule 2.125, 37 C.F.R. § 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.